BILL NO. S-83-12- 42

SPECIAL ORDINANCE NO. S- 265-83

AN ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO GUARANTEE NOT MORE THAN $3,000,000.00 OF THE OBLIGATIONS OF FORT WAYNE CENTER ASSOCIATES, A LIMITED PARTNERSHIP, IN ORDER TO FACILITATE THE FINANCING OF A DOWNTOWN CIVIC CENTER HOTEL AND APPROVING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, Fort Wayne Center Associates, a Limited Partnership, has proposed constructing a downtown civic center hotel, which hotel will be an approximate $18,000,000.00 addition to the downtown area of the City of Fort Wayne, and

WHEREAS, the Fort Wayne and Allen County Convention and Tourism Authority is in the process of constructing a civic center in downtown and it is desirable that a hotel be constructed in the same block with said civic center, and

WHEREAS, the construction of a civic center hotel will result in the creation of hundreds of new construction jobs and approximately 200 permanent jobs within the City of Fort Wayne, and will also result in many additional tourists and visitors being able to come to the downtown area of the City, all resulting in a higher tax base for the City and additional revenues for the City and its citizens, and

WHEREAS, this $18,000,000.00 financing cannot be accomplished without the City of Fort Wayne guaranteeing to a bond purchaser the repayment of a portion of Economic Development Revenue Bonds, and

WHEREAS, the issuance of Economic Development Bonds by the City of Fort Wayne is authorized by the laws of the State of Indiana and is a public purpose;

NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE:

SECTION 1. This Common Council finds that Fort Wayne Center Associates, Ltd. has proposed that they be permitted to construct

an approximately 250 room downtown civic center hotel in the block bounded by Calhoun Street, Washington Street, Harrison Street, and Jefferson Blvd., and further finds that the construction of said hotel will cost approximately $18,000,000.00, including $10,000,000.00 of Economic Development Revenue Bonds; and this Common Council further finds that E. F. Hutton & Company Inc. is willing to purchase and/or underwrite the issuance of $10,000,000.00 of Economic Development Revenue Bonds if said bonds are secured by a Letter of Credit issued by a AA or AAA rated financial institution; and this Common Council further finds that Bank of America, a National Banking Association, is willing to issue its Letter of Credit and is satisfactory to E. F. Hutton & Company Inc., but only if a standby Letter of Credit in the Sum of $6,000,000.00 is issued and the City of Fort Wayne issues its guarantee for $3,000,000.00. It is further understood that Atlantic Financial Federal, a financial institution of the State of Pennsylvania, is willing to issued its $6,000,000.00 standby Letter of Credit backing up Bank of America's initial Letter of Credit but only if the City of Fort Wayne issues its guarantee for $3,000,000.00.

SECTION 2. This Common Council hereby authorizes the City of Fort Wayne, by and through its Light and Power Utility Fund and hereby guarantees the payments agreed to be made by Fort Wayne Center Associates to the Trustee under the Economic Development Revenue Bonds issued in conjunction with this guarantee in an amount not to exceed $3,000,000.00 plus sixty-five days interest on $3,000,000.00, said guarantee being in substantially the form of the Continuing Guarantee of Payment attached hereto, as a part hereof, as Exhibit "A".

SECTION 3. The Common Council agrees that in the event demand is made of the City of Fort Wayne on this guarantee that this Common Countil shall appropriate by Appropriation Ordinance

the funds to make payment on said guarantee.

SECTION 4. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

COUNCILMAN

APPROVED AS TO FORM AND LEGALITY
THIS 12 DAY OF Dec, 1983.

Bruce O. Boxberger, Corporation Counsel

FOX RIVER BOND
25% COTTON

Read the first time in full and on motion by Gia Quinta, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee Annexation (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19___, at _____ o'clock ___.M.,E.S.T.

DATE: 12-13-83

Sandra E. Kennedy
CITY CLERK

Read the third time ~~in~~ full and on motion by Gia Quinta, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	6	2	1		
BRADBURY	✓				
BURNS			✓		
EISBART	✓				
GiaQUINTA	✓				
SCHMIDT		✓			
SCHOMBURG		✓			
SCRUGGS	✓				
STIER	✓				
TALARICO	✓				

DATE: 12-20-83

Sandra E. Kennedy
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (GENERAL) (ANNEXATION) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) NO. S-265-83 on the 20th day of December, 19 83.

ATTEST: (SEAL)

Sandra E. Kennedy
CITY CLERK

Ray A. Eisbart
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 21st day of December, 19 83, at the hour of 10:00 o'clock A.M.,E.S.T.

Sandra E. Kennedy
CITY CLERK

Approved and signed by me this 21st day of December 19 83, at the hour of 4 o'clock P.M.,E.S.T.

Win Moses
WIN MOSES, JR. - MAYOR

STANDBY FINANCING AGREEMENT

This Standby Financing Agreement is entered into by and between Fort Wayne Center Associates, Ltd., an Indiana Limited Partnership ("Borrower"), and the City of Fort Wayne, Indiana, by and through its Light and Power Utility ("Lender").

WHEREAS, the City of Fort Wayne, Indiana, has agreed to issue Ten Million Dollars ($10,000,000.00) of Economic Development Revenue Bonds ("the Bonds") and loan the proceeds to Borrower for the purpose of constructing a hotel in downtown Fort Wayne, and

WHEREAS, E. F. Hutton & Company, Inc. ("Hutton") has agreed to underwrite the issuance of said bonds pursuant to a Bond Purchase Agreement, but only if said bonds are backed by a Letter of Credit, and

WHEREAS, Bank of America National Trust and Savings Association ("B of A") is willing to issue a Letter of Credit in the amount of Ten Million Dollars ($10,000,000.00) plus sixty-five days (65) of accrued interest, which Letter of Credit will pay the bond trustee for the benefit of the bondholders, but the Letter of Credit will only be issued if Atlantic Financial Federal Savings and Loan ("AFF") issued a standby Mortgage Loan commitment in the amount of Six Million Dollars ($6,000,000.00) and if the Lender agrees to issue this Standby Financing Agreement in the amount of Three Million Dollars ($3,000,000.00), and

WHEREAS, construction of a downtown hotel in Fort Wayne will result in hundreds of construction and permanent jobs, an increase in the tax base, and will attract additional visitors to the City, all of which are of benefit to the City and its citizens, and

WHEREAS, based upon the foregoing, the Lender is willing to enter into this Standby Financing Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES OF THE PARTIES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. The Borrower agrees to construct a 250 room downtown convention hotel on the eastern one-third of the block bounded by Calhoun Street, Washington Blvd., Harrison Street and Jefferson Blvd., Fort Wayne, Indiana.

2. The Borrower agrees to finance the hotel construction through conventional debt, the bonds, an Urban Development Action Grant, and with other debt and equity mechanisms.

3. The Borrower agrees to obtain a Six Million Dollar ($6,000,000.00) standby loan from AFF.

4. The Borrower agrees to grant to the Lender, in the event the Lender is required to fund the within loan, a second mortgage on the hotel real estate and improvements thereof, together with an assignment of all leases, rentals and income, and a security interest in the Borrower's rights and all personal property and fixtures relating to such property, subject to no other mortgage, lien or claim other than the first mortgage, lien or claim of AFF, in the amount not to exceed Six Million Dollars ($6,000,000.00), to which Lender hereby agrees to be subordinated. Any such mortgages, assignments and interests shall be granted to the Lender simultaneously with the Bank of America receiving payment from the Borrower from the proceeds of the within loan.

5. The Borrower agrees to repay the loan contemplated herein, pursuant to a promissory note, at an interest rate of two percent (2%) over the prime commercial lending rate of the Bank of America adjusted monthly, with payments of principal and interest amortized over twenty (20) years, but with payment in full within five (5) years from the date of said loan. If the loan is paid in increments then repayment shall be within five (5) years from the date the first increment is made.

In the event the Lender is required to fund the within loan, in whole or in part, the following shall apply:

(a) Prior to the making of the loan the Lender shall be furnished with satisfactory evidence of the title revealing fee simple title in the Borrower subject to no mortgages, liens and encumbrances excepting those granted to AFF as referred to herein;

(b) An agreement from the Borrower as to the fact that the Borrower will not incur any additional indebtedness with respect to the hotel and the hotel operations without the prior consent of the Lender.

6. During the term of the agreement, the Borrower agrees to submit the following to the Lender:

(a) Monthly profit and loss statements;

(b) A listing of all accounts payable of the Borrower due and unpaid for forty-five (45) days or more;

(c) Annual audited financial statements of the Borrower;

(d) Satisfactory proof of all payments to the bond fund;

(e) The right to inspect all books and records of the Borrower during normal business hours.

7. The Borrower does reaffirm and ratify all of those obligations, representations and warranties contained in that certain loan agreement dated December 1, 1983, between the Lender and the Borrower relating to the bonds and specifically and without limitation, Sections 2.02, 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, 6.01, 6.02, and 6.03 thereof.

8. Lender commits to the Borrower, on a standby basis, up to the sum of Three Million Dollars ($3,000,000.00) subject to all of the terms and conditions herein stated and specifically subject to the following terms and conditions:

(a) Lender's liability hereunder and accordingly its commitment herein made shall not commence until that point in time that the Certificate of Occupancy for the hotel is issued. Furthermore,

the Lender's commitment shall be limited to five (5) years and thirty (30) days from the date of the issuance of the bonds as issued by the City of Fort Wayne for the hotel project;

(b) In addition, the Lender's obligation to make the loan as herein committed shall only come about if B of A makes full payment under its Letter of Credit issued in connection with the Bond Indenture;

(c) The Lender's loan shall be limited to funds available from the unencumbered net revenues of the City of Fort Wayne Light and Power Utility, but shall, in all events, be subject to the rights of the Fort Wayne National Bank as contained in that certain Reimbursement Agreement dated December 29, 1983, between said Bank and the Lender. The term "unencumbered net revenues" shall be defined as the gross operating revenues of the Light and Power Utility after payment of all operating expenses and after payment of the sum of Two Hundred Seventy-Five Thousand Dollars ($275,000.00), per annum, to the City Light Trust Fund. Notwithstanding this limitation, the Lender's loan shall be advanced from the proceeds of a Three Million Dollar ($3,000,000.00) bank letter of credit obtained pursuant to a separate agreement between Lender and the Fort Wayne National Bank. The advance of proceeds from the Fort Wayne National Bank's Letter of Credit shall satisfy the Lender's loan obligations herein made. Furthermore, the Lender's loan obligation of Three Million Dollars ($3,000,000.00) shall be reduced by all monies paid which result in a permanent reduction of principle on the bonds and, in addition thereto, any sums paid by the Lender pursuant to Paragraph 8(d)(i), immediately following, which have been approved by B of A;

(d) Notwithstanding anything to the contrary, the Lender shall have the following rights:

(i) Upon notice of an event of default or threatened default by the Borrower under the Bond Loan Agreement, the Lender may, but shall not be required to, make payments for the benefit of the Borrower to cure any such defaults or threats of default for up to a period of one hundred eighty (180) days from the date of notice thereof;

(ii) In the event the Lender makes any such payments as referred to said paragraph (i) immediately above, then, and at that time, the Borrower shall, at Lender's option, do the following;

(a) Assign the hotel operations contract and the operation of the hotel to Lender;

b) Execute a promissory note payable to the order of the Lender for the amount of payment(s) made, said note to be payable ninety (90) days from the date Lender makes such payment or payments and with interest at the rate of the prime commercial lending rate of B of A plus two percent (2%).

9. Any notices required to be sent hereunder shall be delivered either personally or sent certified United States Mail, postage prepaid, as follows:

To the Lender: City Controller's Office
City-County Building
Fort Wayne, Indiana 46802,
with copy sent to City
Attorney's Office
City-County Building
Fort Wayne, Indiana 46802

To the Borrower:

10. This Agreement shall constitute the entire Agreement between the parties and no modification of this Agreement shall be considered valid unless executed by the party sought to be charged thereunder.

11. Neither this Agreement nor any part hereof may be assigned by the Borrower without the express written consent of the Lender. Without diminishing this proscription against assignment, this Agreement shall be binding upon the parties hereto their successors and assigns.

12. This Agreement shall be construed in accordance with the laws of the State of Indiana.

13. This Agreement and the obligations of the Lender herein are subject to approval by the Common Council of the City of Fort Wayne, Indiana, and in that regards such approval of the Common Council shall be deemed given if this Agreement is approved by the Common Council either by the passage of an ordinance or resolution approving same. Furthermore, obligations of the Lender , specifically the Lender's obligation to pay monies hereunder, shall be subject to appropriation of all said monies at that time that funding is required. The Lender's obligations are also subject to the Borrower obtaining all other necessary financing to close the hotel project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 29th day of December, 1983.

CITY OF FORT WAYNE, INDIANA, BY AND THROUGH ITS LIGHT AND POWER UTILITY FUND (LENDER)

BY: _____
Winfield C. Moses, Jr.

BOARD OF PUBLIC WORKS

_____

_____

_____

FORT WAYNE CENTER ASSOCIATES, LTD. (BORROWER), BY AND THROUGH ITS FORT WAYNE CENTER ASSOCIATES, INC., ITS GENERAL PARTNER

BY: _____
As its President

BY: _____
As its Secretary

BILL NO. S-83-12-42

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO GUARANTEE NOT MORE THAN $3,000,000.00 OF THE OBLIGATIONS OF FORT WAYNE CENTER ASSOCIATES, A LIMITED PARTNERSHIP, IN ORDER TO FACILITATE THE FINANCING OF A DOWNTOWN CIVIC CENTER HOTEL AND APPROVING OTHER ACTIONS IN RESPECT THERETO

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO ~~PASS~~.

MARK E. GiaQUINTA, CHAIRMAN	Mark E. GiaQuinta
JAMES S. STIER, VICE CHAIRMAN	James S. Stier
JANET G. BRADBURY	Janet G. Bradbury
SAMUEL J. TALARICO	Samuel J. Talarico
DONALD J. SCHMIDT	

concurred
12-20-83

Sandra E. Kennedy